



*Town of Milton*

115 Federal Street, Milton, Delaware 19968

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**ORDINANCE NO. 2021-008**

**AN ORDINANCE TO AMEND SECTIONS 220-36 AND 220-83 OF THE TOWN CODE, RELATING TO APPEALS WITHIN THE ZONING CODE.**

**WHEREAS**, the Charter of the Town of Milton vests power in the Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

**WHEREAS**, the Charter of the Town of Milton vests power in the Town Council to zone or district the Town and make particular provisions for particular zones or districts with regard to building or building material, and generally to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code; and

**WHEREAS**, the Town Council of the Town of Milton has previously found it necessary for the aforementioned purposes to enact a zoning ordinance, codified as Chapter 220 of the Town Code; and

**WHEREAS**, pursuant to Chapter 220, the Town Council of the Town of Milton may, from time to time, on its own motion or on petition or upon recommendation by the Planning and Zoning Commission, amend, supplement or change the boundaries of the districts or the zoning regulations after public notice and hearing; and

**WHEREAS**, the Town of Milton Planning and Zoning Commission held a duly noticed hearing on October 19, 2021 and voted 7-0 in the manner described in the Advisory Report received by Town Council; and

**WHEREAS,** The Town Council held a public hearing on November 1, 2021, as scheduled by Resolution 2021-014; and

**NOW THEREFORE, BE IT ENACTED AND ORDAINED,** by the Town Council of the Town of Milton, a majority thereof concurring, that the following revisions hereby by incorporated into Sections 220-36 and 220-83 of the Town Code:

Section 1. Amend Section 220-36 of the Town Code, entitled "Appeals," with additions shown by underlining and deletions shown by strikethrough as follows:

§ 220-36 Appeal.

A. The applicant, any Town of Milton property owner(s) or resident(s), or any property owner(s) individually noticed under this Article VI ~~or any interested person~~ may appeal the decision of the Planning and Zoning Commission made under this Article VI. The appeal as detailed below shall be ~~is~~ made to the Mayor and Town Council, with a copy sent to the Town Manager or designee, and shall be filed within 60 days from the Planning and Zoning Commission's decision. The fee to file an appeal shall be established in the currently effective Town of Milton Fee Schedule. In addition, unless the appellant is the prevailing party in the appeal, the appellant shall be responsible for reimbursing the Town for expenses incurred by the Town related to the appeal for engineering fees, attorney fees, transcription fees, and any other professional fees incurred by the Town as a result of said appeal; however, the reimbursement responsibility shall not exceed the amount of the escrow established in the currently effective Town of Milton Fee Schedule. An appellant may file with the appeal a request to proceed in forma pauperis based on financial circumstances on a form prescribed by the Town; if the Mayor and Town Council grant such request to proceed in filing in forma pauperis, the filing fee will be waived for the appellant, who shall also be relieved of any responsibility for reimbursing the Town for its expenses.

(1) All appeals hereunder must be taken up within a reasonable time and conducted as provided in the Rules adopted by the Mayor and Town Council.

(2) The appeal shall be in writing and shall specify the grounds for the appeal, which must comport with the Rules adopted by the Mayor and Town Council. The appellant should review applicable sections of said Rules. The appeal shall identify the elements of the Planning and Zoning Commission's process or decision and material in the record relating to the specified grounds for the appeal.

(3) The Project Coordinator shall forthwith transmit to the Mayor and Town Council the documents constituting the record upon which the appeal is filed.

(4) The appeal shall stay all proceedings in furtherance of the action appealed from, unless the Mayor and Town Council certify that, by reason of the facts stated in the appeal, a stay would, in the opinion of the Mayor and Town Council, cause imminent peril to life or property. In such case, proceedings shall not be stayed.

(5) The Town Manager or designee shall fix a reasonable time for hearing the appeal, give notice to the appellant, appellee, and applicant. At the hearing, each party may appear in person, by agent or attorney, or any combination thereof.

(6) The Mayor and Town Council shall review the record of the matter before the Planning and Zoning Commission, shall consider the arguments presented on appeal, and shall make a determination as to whether the decision was a result of an orderly and logical review of the evidence and involved a proper interpretation and application of Article VI of Chapter 220. The appellant(s) shall bear the burden of persuasion. The Mayor and Town Council, in conformity with the provisions of the Rules, shall take action on the appeal.

B. The applicant, any Town of Milton property owner(s) or resident(s), or any property owner(s) individually noticed under this Article VI or any interested person may appeal the decision of the Project Coordinator of the Town of Milton made under this Article VI. The appeal as detailed below shall be is made to the Planning and Zoning Commission, with a copy sent to the Town Manager or designee, and shall be filed within 60 days from the Project Coordinator's decision. The fee to file an appeal shall be established in the currently effective Town of Milton Fee Schedule. In addition, unless the appellant is the prevailing party in the appeal, the appellant shall be responsible for reimbursing the Town for expenses incurred by the Town related to the appeal for engineering fees, attorney fees, transcription fees, and any other professional fees incurred by the Town as a result of said appeal; however, the reimbursement responsibility shall not exceed the amount of the escrow established in the currently effective Town of Milton Fee Schedule. An appellant may file with the appeal a request to proceed in forma pauperis based on financial circumstances on a form prescribed by the Town; if the Planning and Zoning Commission grants such request to proceed in filing in forma pauperis, the filing fee will be waived for the appellant, who shall also be relieved of any responsibility for reimbursing the Town for its expenses.

(1) All appeals hereunder must be taken up within a reasonable time and conducted as provided in the Rules adopted by the Planning and Zoning Commission.

(2) The appeal shall be in writing and shall specify the grounds for the appeal, which must comport with the Rules adopted by the Planning and Zoning Commission. The appellant should review applicable sections of said Rules. The appeal shall identify the elements of the Project Coordinator's process or decision and material in the record relating to the specified grounds for the appeal.

(3) The Code Enforcement Officer shall forthwith transmit to the Planning and Zoning Commission the documents constituting the record upon which the appeal is filed.

(4) The appeal shall stay all proceedings in furtherance of the action appealed from, unless the Planning and Zoning Commission certifies that by reason of the facts stated in the appeal statement a stay would, in the opinion of the Planning and Zoning Commission, cause imminent peril to life or property. In such case, proceedings shall not be stayed.

(5) The Town Manager or designee shall fix a reasonable time for hearing the appeal, give notice to the appellant, appellee, and applicant. At the hearing, each party may appear in person, by agent or attorney, or any combination thereof.

(6) The Planning and Zoning Commission shall review the record of the matter before the Project Coordinator, shall consider the arguments presented on appeal, and shall make a determination as to whether the decision was a result of an orderly and logical review of the evidence and involved a proper interpretation and application of Article VI of Chapter 220. The appellant(s) shall bear the burden of persuasion. The Planning and Zoning Commission, in conformity with the provisions of the Rules, shall take action on the appeal.

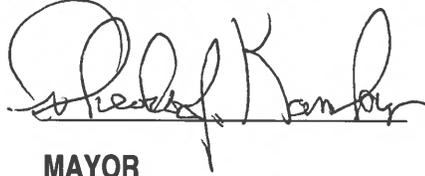
Section 2. Amend Section 220-83A of the Town Code, entitled "Appeals," with additions shown by underlining and deletions shown by strikethrough as follows:

§ 220-83 Powers and duties.

The Board of Adjustment shall have all the powers and duties prescribed by this chapter, which are more particularly specified as follows:

A. Appeals. It shall be the responsibility of the Board of Adjustment to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, determination, or interpretation made by the Code Enforcement Officer or other Town administrative official in the enforcement of this chapter. The Board of Adjustment may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or interpretation appealed and may resolve the appeal in accordance with this chapter or approved regulations. The fee to file an appeal shall be established in the currently effective Town of Milton Fee Schedule. In addition, unless the appellant is the prevailing party in the appeal, the appellant shall be responsible for reimbursing the Town for expenses incurred by the Town related to the appeal for engineering fees, attorney fees, transcription fees, and any other professional fees incurred by the Town as a result of said appeal; the reimbursement responsibility shall not exceed the amount of the escrow established in the currently effective Town of Milton Fee Schedule. An appellant may file with the appeal a request to proceed in forma pauperis based on financial circumstances on a form prescribed by the Town of Milton; if the Board of Adjustment grants the request, the filing fee will be waived for the appellant, who shall also be relieved of any responsibility for reimbursing the Town for its expenses.

I, **THEODORE J. KANAKOS**, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the 7<sup>th</sup> day of February, **2022**, following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.

A handwritten signature in black ink, appearing to read 'Theodore J. Kanakos', written over a horizontal line.

**MAYOR**

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**SYNOPSIS**

This ordinance amends the Town Code's zoning ordinance appeal process to provide direction for the basis and acceptance of an appeal.